IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6450 of 1997

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRANSPEK INDUSTRY LIMITED AND ANOTHER
Versus
EKLABARA GRAM PANCHAYAT AND OTHERS

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Appearance :
MR RAKESH GUPTA for M/S TRIVEDI & GUPTA for Petitioner.
MR RN SHAH for Respondent no.1.
MR HS MUNSHAW for Respondent nos. 2 - 3.
MS NAIR, AGP for Respondent no.4.
MR SK JHAVERI for Respondent no.5.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 10/07/2007

ORAL JUDGMENT

The petitioner before this Court is Transpek Industry Limited, a manufacturer, having its manufactory within the revenue limits of

Ekalbara Gram Panchayat (herein after referred to as “the Gram Panchayat”). It is not in dispute that the petitioner was, at the relevant time, liable to pay octroi to the Gram Panchayat for the goods imported by it. This petition arises from the rejection of the offer of lumpsum payment of octroi made by the petitioner.

It appears that for the year 1996-1997, the petitioner had offered to pay a lumpsum amount of Rs.24,56,000/- by way of octroi. The said offer was not acceptable to the Gram Panchayat. Feeling aggrieved, the Ekalbara Industries' Association preferred appeal before the Collector, which came to be rejected. In revision application before the State Government, the Gram Panchayat maintained that the Gram Panchayat had received offers from the contractors ranging from Rs.25 Lakhs to Rs.60 Lakhs a year and if the offer for lumpsum amount made by the petitioner were accepted, the Gram Panchayat would suffer a financial loss. On such statement made on behalf of the Gram Panchayat, by impugned order dated 21st/28th August 1997, the revision application preferred by the Ekalbara Industries' Association was rejected. Feeling aggrieved, the petitioner has preferred the present petition.

In the present petition, the petitioner has also challenged constitutionality of Section 202 of the Gujarat Panchayats Act, 1961 and the power of the Gram Panchayat to award contract for collection of octroi. Mr.Gupta has submitted that in view of abolition of octroi, the petitioner does not press the challenge to the constitutionality of the said Section 202 or the authority of the Gram Panchayat to award contract for collection of octroi.

Mr.Gupta has submitted that since 1st May 2001, the octroi has been abolished. Pending this petition, pursuant to the ad-interim order

made on 3rd September 1997 and later on made absolute, the petitioner had paid lumpsum amount of octroi every month to the Gram Panchayat. As the octroi has already been paid, the petitioner does not intend to claim any refund.

Mr.R.N.Shah has appeared for the Gram Panchayat. He admits that the octroi has been abolished since 1st May, 2001. He also admits the receipt of the amount of octroi paid by the petitioner. He also agrees that whatever amount is paid by the petitioner is acceptable to the Gram Panchayat and the Gram Panchayat does not intend to claim further recovery of octroi.

In above view of the matter, the cause of action does not survive. The petition has, thus, become infructuous.

Mr.Jhaveri has appeared for the respondent no.5, the contractor. He has submitted that since the impugned order of the State Government rejecting the claim made by the petitioner and in view of the direction issued by the State Government, the Gram Panchayat had awarded the contract for collection of octroi for two years, 1997-1998 and 1998-1999 to the respondent no.5 for a lumpsum annual payment of Rs.30 Lakhs. On account of interim relief granted in the present petition, the petitioner paid octroi directly to the Gram Panchayat. The respondent no.5, therefore, could not collect octroi under the contract awarded to it. It has thus incurred loss, which should be indemnified. Mr.Gupta has objection. He has submitted that the contract given to the respondent no.5 was illegal, the respondent no.5 has not incurred any loss, nor is it entitled to damages.

In the event, the respondent no.5 has incurred any loss, he may be entitled to the damages. However, such damages cannot be ascertained in the present proceeding, as many a questions arise. It is, therefore, not possible to indemnify the respondent no.5 in the present proceeding. It is clarified that, subject to its maintainability, the respondent no.5 may take out appropriate proceeding for recovery of damages.

Subject to the above observation, the petition is disposed of. Rule is discharged. The parties shall bear their own cost.

(Ms.R.M.Doshit, J.)

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The date "*21st/28th August, 1997*" on page no.2 of the judgment and order dated 10th July, 2007 made on Special Civil Application No.6450/1997 is corrected and replaced for "*28th August, 1997*" by the oral order made on 31st July, 2007 below Note for Speaking to Minutes in Special Civil Application No.6450/1997.

(Ms. R.M.Doshit, J.)

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